

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

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ANTHONY BUSSIE,	:	
Petitioner,	:	Civil Action No. 14-3997 (RMB)
v.	:	
DAVID ORTIZ, et al.,	:	<u>MEMORANDUM OPINION</u>
Respondents.	:	<u>AND ORDER</u>

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**BUMB**, District Judge:

This matter comes before the Court upon the Clerk's receipt of Petitioner's application executed on a § 2241 habeas form ("Petition") and Petitioner's incomplete application to proceed in this matter in forma pauperis ("IFP").<sup>1</sup> See Docket Entry No. 1. Prior to commencing the instant matter, Petitioner commenced a multitude of civil and habeas actions in this District.<sup>2</sup> His

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<sup>1</sup> In a habeas matter, the prisoner seeking to proceed IFP must submit to the Clerk: (a) a completed affidavit of poverty; and (b) a certification signed by an authorized officer of the institution certifying both the amount presently on deposit in the petitioner's prison account as well as the greatest amount on deposit in the petitioner's prison account during the six month period prior to the date of the certification. See Local Civil Rule 81.2(b). Thus, to submit an application to proceed IFP in a habeas case, the prisoner must: (a) complete all questions in his affidavit, sign and date that affidavit; and (b) obtain the signature of the appropriate prison official who certifying the prisoner's present and the greatest six-month amounts. See *id.*

<sup>2</sup> See, e.g., Bussie v. Evans, Civil Action No. 13-4316; Bussie v. United States, Civil Action No. 14-2307; Bussie v. New Jersey, Civil Action No. 14-2719; Bussie v. United States, Civil Action No. 14-2932; see also Bussie v. Bush, Civil Action No. 09-

latest action was Bussie v. Unknown Congressman Robert E. Andrews ("Andrews"), Civ. Action No. 14-3210 (RMB) (D.N.J.). There, this Court stated:

[Petitioner] was indicted for knowingly and willfully threatening to assault a Congressman. On April 18, 2012, this Court held [Petitioner's] § 4247(d) competency hearing. During the hearing, both parties moved for finding him incompetent to stand trial . . . . This Court granted the parties' joint application and [upon finding Petitioner incompetent,] placed [him] in temporary custody so to restore him to competency. [While in pre-treatment and treatment confinement, he commenced numerous civil and habeas actions raising incoherent challenges. Hence,] his civil rights claims have invariably been dismissed for failure to state a claim and [stayed, subject to repleading in the event of] his restoration to competency, while his [habeas] claims have been dismissed as premature.

Bussie v. Andrews, 2014 U.S. Dist. LEXIS 70118, at \*2-3 and n.1 (D.N.J. May 21, 2014)(citing, inter alia, United States v. Bussie ("Criminal Case"), Crim. Action No. 12-0229 (RMB), footnoted text incorporated into the main text).<sup>3</sup>

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6516; Bussie v. Bush, Civil Action No. 10-4555; Bussie v. Bush, Civil Action No. 10-4594; Bussie v. United States, Civil Action No. 11-0098; accord Conjured up Entertainment v. United States, Civil Action No. 11-11475 (commenced on behalf of Bussie and a juridical entity upon assertion that the United States owed Bussie \$55 million for intelligence he provided to President Bush); Conjured up Entertainment v. United States, Civil Action No. 11-1854 (same); Conjured up Entertainment v. United States, Civil Action No. 11-2076 (same); Conjured up Entertainment v. United States, Civil Action No. 11-2322 (same); Conjured up Entertainment v. United States, Civil Action No. 11-2824 (same); Conjured up Entertainment v. United States, Civil Action No. 11-2751 (same); Conjured up Entertainment v. Clinton, Civil Action No. 12-1894 (same, as to President Clinton)).

<sup>3</sup> Although Petitioner twice consented to treatment with an antipsychotic medication that could restore him to competency, he

In his Andrews action, Petitioner named "Taron Bussie ('Taron') as co-plaintiff. Taron, being convicted of aggravated assault, resisting arrest and controlled substance offenses, was sentenced to a three-year residential community program, and is expected to be released on December 24, 2014." Id. at \*1.

Recognizing that Petitioner's "mental impediment greatly affect[ed] his litigation practices," this Court explained to Petitioner that: (a) he had no standing to litigate on Taron's behalf; and (b) habeas petitions were vehicles to seek release from confinement, while civil complaints were vehicles to assert violations of civil rights. See id. at \*5.

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withdrew his consent both times after just a few treatments. See Criminal Case, Docket Entry No. 40, at 1-2. The Government's motion to involuntary medicate Petitioner for the purposes of standing trial was denied. See id. at 5-20 (analyzing the Government's motion under the four-prong test articulated in Sell v. United States, 539 U.S. 166 (2003)); accord White v. Napoleon, 897 F.2d 103, 113 (3d Cir. 1990) ("convicted prisoners, like involuntarily committed mental patients, retain a limited right to refuse treatment and a related right to be informed of . . . viable alternatives. The scope of the right to refuse treatment [is] circumscribed by legitimate countervailing State interests. . . . Accordingly, a prison [or a place of civil confinement] may compel [its inmate] to accept treatment when [the State] officials, in the exercise of professional judgment, deem it necessary to carry out valid medical or penological objectives [so to prevent the inmate from harming himself or others]" (relying on Youngberg v. Romeo, 457 U.S. 307, 322-23 (1982), a decision addressing the rights of civilly committed individuals)). Since the Government unequivocally articulated its intent to seek Petitioner's civil commitment, see id. at 7, 11, and the issue of Petitioner inflicting harm upon himself or others, while in civil confinement, was neither raised nor reached in his Criminal Case, no statement made in this Memorandum Opinion and Order shall be construed as this Court's expression of opinion as to that issue.

Shortly after the Court entered its Andrews decision, the Clerk received the application at bar. See Docket Entry No. 1, at 1. Here, naming his warden, the Bureau of Prisons, a fictitious "Treasurer Financial Center" and the Congressman as Respondents, Petitioner asserts that his habeas rights have been violated by the filing fees requirement applicable to all judicial proceedings, by Taron's conviction and by Petitioner's prosecution, if such is ever forthcoming, as well as by what Petitioner perceives as "corruption" of certain unspecified public officials. See id. at 6-8. On the basis of these assertions, Petitioner seeks an order eliminating the filing fee requirement and the Eleventh Amendment immunities, new trial for Taron, eradication of what he sees as a "racial problem," vacatur of Petitioner's criminal sentence (that might be imposed if the Government does not withdraw its criminal charges upon his civil commitment), as well as an unspecified "punishment" of the Congressman. Id. at 8.

As this Court already explained, while addressing Petitioner's numerous prior habeas and civil actions, Petitioner: (a) is without standing to raise challenges on behalf of Taron; (b) cannot challenge a sentence that has not been imposed; (c) cannot litigate claims falling outside the narrow habeas mandate; and (d) cannot litigate philosophical, socio-political and other abstract or hypothetical matters falling outside the "case or

controversy" requirement of Article III.<sup>4</sup> See U.S. Const. art. III, § 2, cl. 1 (setting forth the limitations of the federal judicial mandate); Whitmore v. Arkansas, 495 U.S. 149, 154-55 (1990) (the jus tertii requirement); Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002) (detailing qualitative differences between habeas and civil matters); Ganim v. Federal Bureau of Prisons, 235 F. App'x 882 (3rd Cir. 2007) (if a judgment in the litigant's favor would not affect the fact or duration of his confinement, habeas relief is unavailable to him, and a civil complaint is the appropriate vehicle to raise his claims); Toolasprashad v. Grondolsky, 570 F. Supp. 2d 610, 636 (D.N.J. 2008) (challenges based on hypothetical future developments are speculative and not cognizable in habeas review since "the language of [the habeas statute] is set forth in present rather than in future terms, i.e., it reads: 'The writ of habeas corpus shall not extend to a prisoner unless . . . he is [rather than will be] in custody in violation of the Constitution or the laws or treaties of the United States'"') (citation omitted).

Correspondingly, Petitioner's application to proceed IFP will be denied, and his challenges will be dismissed.<sup>5</sup>

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<sup>4</sup> Moreover, the constitutionality of the filing fee statute was long established. See, e.g., Thomas v. Holder, 2014 U.S. App. LEXIS 8453 (D.C. Cir. May 6, 2014).

<sup>5</sup> Since civil complaints are merely received and cannot be deemed "filed" until and unless the litigant prepay his filing

IT IS, therefore, on this 27th day of June 2014,

**ORDERED** that Petitioner's applications to proceed in this matter in forma pauperis is denied; and it is further

**ORDERED** that the Clerk shall administratively terminate this matter by making a new and separate entry on the docket reading, "THIS MATTER IS TERMINATED FOR FAILURE TO OBTAIN IFP STATUS AND IN LIGHT OF PETITIONER'S ASSERTION OF CHALLENGES RAISED WITHOUT PROPER STANDING AND/OR NOT COGNIZABLE UNDER ARTICLE III AND/OR FALLING OUTSIDE THE HABEAS MANDATE AND/OR BEING FACIALLY MERITLESS"; and it is further

**ORDERED** that the Clerk shall serve this Memorandum Opinion and Order upon Petitioner by regular U.S. mail; and it is finally

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fee or duly obtains IFP status, see 28 U.S.C. § 1915, the court cannot reach the merits of the litigant's civil claims without first resolving the IFP issue. See Izquierdo v. State, 2013 U.S. App. LEXIS 15533, at \*2-3 and n.1 (3d Cir. July 25, 2013). In contrast, habeas applications are deemed "filed" upon receipt, see Brown v. Grondolsky, 2009 U.S. Dist. LEXIS 103111, at \*2 (D.N.J. Nov. 5, 2009) (citing to the order stating, "The revised Habeas Rule 3(b) requires the Clerk to file a petition, even though it may otherwise fail to comply with Habeas Rule 2. The Rule is not limited to those instances where the petition is defective only in form; the Clerk is also required to file the petition even though it lacks the required filing fee or an in forma pauperis form) (quoting 28 U.S.C. § 2254, Rule 3, Advisory Committee Notes, 2004 Am., brackets and ellipses omitted); accord Santana v. United States, 98 F. 3d 752 (3d Cir. 1996), therefore enabling the court to address the merits of the litigant's habeas claims, although the court may require the litigant's prepayment of filing fee or submission of a complete IFP application after its screening on the merits. See Local Civil Rule 81.2(b).

ORDERED that the Clerk shall enclose in said mailing a blank in forma pauperis form for incarcerated individuals seeking to prosecute a habeas action. See Hairston v. Gronolsky, 348 F. App'x 716 (3d Cir. Oct. 15, 2009) (a litigant's willingness or unwillingness regardless, his "legal obligation to pay the filing fee [is] incurred by the initiation of the action itself") (citing Hall v. Stone, 170 F.3d 706, 707 (7th Cir. 1999)); accord Bacon v. Mandell, 2013 U.S. Dist. LEXIS 162144 (D.N.J. Nov. 14, 2013) (the Clerk's service of IFP forms and the court's attempts to enforce the IFP requirement is not necessarily futile as to a litigant who commences numerous legal actions while suffering from a mental impairment, since the litigant might still comply with the requirement during his instances of cognitive clarity).

s/Renée Marie Bumb  
**RENÉE MARIE BUMB**  
**United States District Judge**